

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 AT SEATTLE

4 STEVEN ODSATHER, ET AL,,)
5 Plaintiff,) No. 2:18-cv-00289-JCC
6 vs.)
7 FAY SERVICING, LLC ET AL,)
8 Defendants.)

9
10 30(B)(6) DEPOSITION UPON ORAL EXAMINATION OF
11 FAY SERVICING, LLC
12 MICHAEL PATERNO
13

14 9:34 A.M.

15 AUGUST 24, 2018

16 3600 15TH AVENUE WEST, SUITE 200

17 SEATTLE, WASHINGTON
18



23
24 REPORTED BY: BETSY E. DECATER, RPR, CCR 3109
25



A P P E A R A N C E S

FOR THE PLAINTIFF:

ROBERT W. MITCHELL
Attorney at Law
1020 N. Washington Street
Spokane, Washington 99201-2237
(509) 840-0003
robertmitchellattorney@creditlaw101.com

FOR THE DEFENDANT:

RYAN M. CARSON
Wright Finlay & Zak, LLP
3600 15th Avenue West
Suite 200
Seattle, Washington 98119
(949) 477-5050
rcarson@wrightlegal.net



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1 SEATTLE, WASHINGTON; AUGUST 24, 2018

2 9:34 A.M.

3 --oOo--

4
5 MICHAEL PATERNO,

6 sworn as a witness by the Certified Court Reporter,

7 testified as follows:

8
9 EXAMINATION

10 BY MR. MITCHELL:

11 Q. Okay. So can you state your name for the record?

12 A. Michael Paterno, P-a-t-e-r-n-o.

13 Q. And then you understand the oath that you just
14 took means that you're sworn to tell the truth, correct?

15 A. Yes, sir.

16 Q. And testifying here is essentially the same as
17 testifying in court?

18 A. Yes, sir.

19 Q. Are you prepared to answer my questions today?

20 A. Yes, sir.

21 Q. Not on any medication or anything that would
22 prevent you from giving honest, truthful answers?

23 A. No, sir.

24 Q. So the basic ground rules for a deposition -- I
25 assume that you've had depositions before?



1 topics that you have some knowledge about?

2 A. Yes.

3 Q. Okay. Good.

4 (Deposition Exhibit No. 2 was marked for
5 identification.)

6 Q. (BY MR. MITCHELL) And can you describe that
7 document.

8 A. I've never seen this document before, but what I
9 do believe it is it's somebody's -- and I would imagine
10 you or your office -- looked up Fay Servicing as a
11 business and then this gives you a little bit of the
12 location, address of the business and who the -- you
13 know, what type of company it is and stuff like that.
14 So it just looks like maybe a corporate description of
15 the company.

16 Q. In your opinion is Fay a collection agency?

17 A. Yes. I would say, yeah, we would be doing that.
18 That's part of our business for sure.

19 Q. How about a debt collector?

20 A. Yes.

21 Q. Okay. That is Exhibit No. 2. Moving on to 3.

22 Really, the only question I have with that one is
23 have you seen it before?

24 A. This particular document I had not seen before.
25 I don't recall seeing this one prior to today.



1 it a couple of seconds before you respond so if it's a
2 question he doesn't want you to answer he can instruct
3 you not to answer before you get started.

4 A. Understood.

5 Q. All right. Now I forgot what question I asked
6 him.

7 MR. CARSON: What laws and regulations guide
8 Fay's business.

9 Q. (BY MR. MITCHELL) What laws and regulations
10 govern Fay's business practices?

11 A. Well, I can guarantee you that I would not be
12 able to name them all. But you've got CFPB, which is
13 one of the bigger regulatory ones. You've got the
14 FDCA -- the FDCA. There are Federal Trade Laws
15 Commission, the Office of the Controller. I mean,
16 there's a litany of, you know, things that we're
17 scrutinized by.

18 Q. Kind of daunting sometimes, huh?

19 A. It does get kind of overlapping. And, you know,
20 when we get into training and doing our ongoing
21 training, it's all the acronyms and different things, it
22 gets just kind of confusing at times. But it's out
23 there.

24 Q. I can imagine. I struggle with it, and I do it
25 for a living.



1 Q. Between that time frame.

2 A. So I would have to say sometime between that time
3 frame and maybe a little bit later into March, April of
4 2018 maybe.

5 Q. Okay. But you're fairly confident that by March
6 or April Fay had this in their possession?

7 A. I'd be pretty confident for that, yes.

8 Q. So let's go to -- we're going to go to the last
9 page, 198.

10 A. (Witness complies.)

11 Q. And the top paragraph. Can you read that for --
12 I'm going to ask you do you think that that shows that
13 the Odsathers disputed owing this debt?

14 A. Yes, I would agree with that.

15 Q. So why didn't Fay report the account as disputed
16 to the credit bureaus?

17 A. Again, we don't know the specific timing of
18 obtaining these, and there was so much unfortunate
19 misinformation, again, going back to the fact that we
20 don't service non-secured loans. I mean, there was
21 probably so much misinformation that it was very hard to
22 decipher what information was actually accurate, what
23 was not accurate in order for to us to make the
24 determination that we had eventually come to trying to
25 get this thing resolved.



1 Q. But at this point we can agree that Fay at least
2 knew that the debt was disputed, correct?

3 A. We did. But, again, based on -- again, I don't
4 know when this came to us and, again, we were asking for
5 information from Mr. Odsather early on in the
6 conversations and he, you know, was -- again, he was
7 very nice in explaining a couple of times in the
8 conversations that were recorded what the issues were
9 and he was explaining that he was going to get us
10 documentation to back those things up. But, again,
11 without -- you know, when you get that information from
12 a borrower verbally, you don't immediately say, oh, this
13 is going to be disputed. So you have to do the legwork,
14 you have to get some backup, you have to get the
15 documentation, and then you have to go through reviewing
16 the information that you have.

17 And, unfortunately, again, in this case the
18 information that wound up to be from HSBC that was so
19 convoluted, it was really hard to draw, again, that
20 picture of what the hell they were trying to accomplish.

21 Q. Okay. So then your understanding of the way that
22 Fay works is if a consumer disputes an account, then Fay
23 will investigate that account and, if they figure out
24 that the dispute makes sense, then they will report it
25 as disputed?



1 MR. CARSON: Object to form.

2 THE WITNESS: I think in this particular case,
3 again, going back to the initial communications with the
4 Odsathers, it was more verbal. And based on verbal, you
5 can't report that it's disputed. You have to get the
6 information and then you have to do the research. And I
7 don't know -- again, going back on the timing of the
8 letters and when exactly that Fay knew that this might
9 have been a valid dispute that we would report it as
10 disputed.

11 Q. (BY MR. MITCHELL) Okay. Based on your research
12 before this deposition, when did Fay learn that this
13 debt was old and should no longer be reported?

14 A. If I remember correctly from the data that I was
15 looking at, it was probably late in 2017, sometime in
16 December.

17 Q. Okay.

18 A. Maybe November, late November, December that it
19 seemed like it started to make more sense, and then they
20 were, I think, making some of the corrective changes at
21 that point.

22 Q. So I would like to make this part of the same
23 exhibit. Is that okay? So 228, it's behind the same
24 tab, it's just a little bit farther in.

25 MR. CARSON: So it's still behind tab --



1 Q. What does Fay use these for?

2 A. That I do not really know. Obviously, I would
3 imagine there's some pertinent information that they
4 would gather from these, but other than that I don't
5 really have an answer for you without knowing more about
6 these documents.

7 Q. Okay. If you don't know, we'll set it aside. So
8 your binder is going to say 11A. It's actually going to
9 be 12.

10 A. Okay.

11 (Deposition Exhibit No. 12 was marked for
12 identification.)

13 MR. CARSON: Exhibit 11 was the Accurant report,
14 right?

15 MR. MITCHELL: Yep.

16 Q. (BY MR. MITCHELL) So 12 is going to be Bates 237
17 through 248 -- no, excuse me.

18 A. 241.

19 Q. 241.

20 And do you -- what is this document?

21 A. This is the servicing notes for Fay.

22 Q. Up there at the top where we see that date again,
23 the due date of 4/24/2014, did that information come
24 from Beneficial?

25 A. Yes.



1 information and figure out what is happening and what's
2 going on. And, again, there's the confusion there
3 because if we are going forward with foreclosure, well,
4 which deed of trust are we going on? And I think all of
5 the information and things that we're getting from Mr.
6 Odsather kind of triggered a lot of the confusion as to
7 which way this thing is going to go.

8 Q. What about, working our way down there, Trey
9 Rodman?

10 A. Trey works with Fay.

11 Q. In that foreclosure department?

12 A. Yes.

13 Q. What about Trent Lewis, have you heard that name?

14 A. I don't recall that name, seeing that name.

15 Q. What about Joanna Clinton, do you know her?

16 A. That's not another name, again, that's familiar
17 to me.

18 Q. How about Dawn Talavera, have you heard of that
19 person?

20 A. Dawn I have not heard of. It looks like from the
21 notes that she's a Fay employee just based on what's
22 being entered there.

23 Q. Okay. Have you looked at these notes before?

24 A. Yes.

25 Q. Are you pretty familiar with them?



1 A. Uh-huh, yes.

2 Q. Do they show that the Odsathers disputed the
3 account?

4 A. In the very beginning in the first phone call --
5 and, again, this was the start of the whole verbal
6 process that we talked about -- I think in the -- if you
7 look between seven -- July 18, those conversations that
8 were going on there, that's talking about -- it starts
9 at 7/18/2017 at 3:02:07 p.m. and it starts "the first
10 contact made, spoke with borrower, received call from
11 borrower, he did not want to CIP but did provide his
12 name and phone number, gave the phone number, borrower
13 stated he has been receiving calls from" -- and you have
14 to go from that line up two lines "from Fay servicing,
15 but when he picks up there is no one on the line."

16 And I think that's what was happening with -- it
17 looks like prior to that we had made some phone calls to
18 him and they were probably on the automatic dialer, and
19 I think when he picked up the phone and may have not
20 picked up within a certain number of rings so he was
21 getting nobody on the other line, so he's explaining
22 that to now the person that he's on the phone with.

23 So "borrower stated that this loan was a
24 promissory note originated in 2002, no payments were
25 ever made." Now you're reading back up another line, so



1 you got to keep reading up a line, "borrower stated the
2 statute of limitations ran out in six years, he
3 attempted reaching out to Household Finance," and it
4 goes on to tell the story, as I said, that Mr. Odsather
5 was open in telling the story. But, again, at this
6 moment we have only this verbal picture from what he's
7 telling us, and you have to go through the process in
8 order to get the documentation and do that stuff.

9 Q. But your opinion of the verbal picture was that
10 he was disputing that he owed the debt?

11 A. Yeah.

12 (Off the record.)

13 (Deposition Exhibit No. 12 was marked for
14 identification.)

15 Q. (BY MR. MITCHELL) Do you have that letter in
16 front of you?

17 A. This is dated September 19, 2017?

18 Q. Correct.

19 A. Yes.

20 Q. And it's from Fay to Odsather, correct?

21 A. Yes. It's reference late payment notice.

22 Q. So do you see the balance there in the middle?

23 A. I do.

24 Q. What do you think that represents?

25 A. That would represent the payment amounts from



1 2014 when HSBC told us that they were -- had defaulted.

2 Q. Okay.

3 A. So talking about a hundred dollars per month for
4 whatever number of months plus the interest and late
5 charge.

6 Q. Okay. Where does the late charge come from?

7 A. I do believe I saw the late charge on another
8 documentation that came from HSBC. There was -- so in
9 the transfer of amounts, that would have come over as
10 the late charge.

11 Q. But do you remember seeing it on the actual
12 agreement to pay \$10,000 at a hundred --

13 A. Plus late fees, no, I didn't see anything about
14 late fees.

15 Q. I only want to make this an exhibit if you've
16 seen it. Does that look familiar?

17 A. I'm pretty sure I saw this one already. I don't
18 know that -- again, I think this came -- this is not --
19 obviously not on the origination file. This came after
20 the fact.

21 Q. It's dated after in September, so it was directed
22 to Fay?

23 A. Right.

24 Q. So you're --

25 MR. CARSON: It's already an exhibit because it's



1 also Bates 2. It's just a bigger, cleaner version of
2 Bates 2, and that Bates 2 was part of Exhibit 5, I
3 think.

4 Q. (BY MR. MITCHELL) Okay. Do you think that
5 document illustrates that the Odsathers were disputing
6 that they owe the debt?

7 MR. CARSON: Object to the form; asked and
8 answered.

9 THE WITNESS: Where are we in the binder with
10 that particular one?

11 Q. (BY MR. MITCHELL) The 9/29/17. Oh, and in the
12 binder it's 14.

13 A. Okay.

14 MR. CARSON: No Bates, right?

15 MR. MITCHELL: No Bates. Do you want me to make
16 it a new exhibit?

17 MR. CARSON: It's up to you.

18 Q. (BY MR. MITCHELL) So no Bates on this. This is
19 going to be a new exhibit, and we are up to 13 now.

20 (Deposition Exhibit No. 13 was marked for
21 identification.)

22 Q. (BY MR. MITCHELL) So this is Exhibit 13, and the
23 documents that I'm going to ask you to review start
24 behind tab 14 and end behind tab 14. So there's going
25 to be this group. And essentially what it is, it looks



1 like handwritten notes and e-mails from the Odsathers to
2 Fay.

3 A. (Witness reviewing document.) Okay.

4 Q. Okay. Do these documents lead you to conclude
5 that the Odsathers disputed this debt?

6 A. Yes, sir.

7 Q. And is there also a supporting document in here
8 from the man who purchased the house stating that he
9 purchased the house?

10 A. Yes, sir.

11 Q. These are dated in late September and early
12 October?

13 A. That is correct.

14 Q. Do you think that based on these documents Fay
15 should have reported the account as disputed?

16 MR. CARSON: Object to form.

17 THE WITNESS: I agree that they're in dispute,
18 and based on the time frame of when reporting happens it
19 would not have happened immediately at the time of this
20 -- at the time of these letters.

21 Q. (BY MR. MITCHELL) You think after these letters,
22 the next time that Fay reported the account after these
23 letters that Fay should have reported it as disputed?

24 MR. CARSON: Object to form.

25 THE WITNESS: Again, without going through



1 their -- having to do their due diligence and, you know,
2 when you get letters from the borrowers, you have to do
3 all of the research to -- I'm trying to -- I just drew a
4 blank on the word I'm looking for, but to confirm the
5 dispute.

6 (Deposition Exhibit No. 14 was marked for
7 identification.)

8 Q. (BY MR. MITCHELL) We are on Exhibit 14, but in
9 your binder it will say 15, I believe, First American
10 Title Search or Title Report.

11 A. Okay.

12 Q. Do you know did Fay order this? And these are
13 Bates 252 to 261.

14 A. (Witness reviewing document.)

15 Yes, we would have ordered this.

16 Q. Can you look at the very last page, 261?

17 A. (Witness complies.)

18 Q. And can you read who the invested owner is on
19 this title report?

20 A. Michael Lee Ritter and Hiromi Ritter, husband and
21 wife.

22 Q. And can you bounce back to 254 and read line 1,
23 the date on the commitment date?

24 A. Commitment date is September 27, 2017.

25 Q. So do you agree that on or about September 27,



1 borrower back to Equifax, and then obviously it would
2 come back to us. But it is -- it does take some time.
3 I mean, it's not an overnight process where, you know, I
4 could send it to them -- we would be sending it right to
5 them for three months in a row, and they may not get it
6 right.

7 Q. So what you were just describing is actually
8 called an ACDV, and we're going to find it at Tab 28 in
9 your book. And we're going to make it 17, Exhibit 17.

10 (Deposition Exhibit No. 17 was marked for
11 identification.)

12 Q. (BY MR. MITCHELL) And the individual that
13 Equifax says provided this information, her name was
14 Madelyn Feliciano. Have you heard of her?

15 A. I have not.

16 Q. You don't know if she's a Fay employee?

17 A. I do not -- where do you see that?

18 Q. It is in the top left quadrant. I'm going to
19 call it quadrant because there's lines and boxes. It
20 says "responder name" right above that telephone number
21 that starts with 312.

22 A. Okay, I see that.

23 Q. So the credit report -- the piece of the credit
24 report that we just looked at when we were talking about
25 how Fay reported it and you said you're not sure if



1 that's how Fay reported it, just so you know, this
2 document is actually the Automated Consumer Dispute
3 Verification, and this is what the they send to Equifax
4 in response to a dispute.

5 A. I have seen these.

6 Q. So if you look about midway down, there is a spot
7 called "narratives" off to the right, about midway off
8 to the right. Do you see that?

9 A. Narratives, okay.

10 Q. Can you read the list of narratives?

11 A. "Foreclosure process started, real estate
12 mortgage account, historical data, suppressed 180 days
13 ago or more past due."

14 Q. So stop there. That's what was being reported?

15 A. Okay.

16 Q. And below that is what Fay told Equifax in
17 response to this dispute. Can you read that for us?

18 A. Below that in the same box?

19 Q. Pretty much. There's a line, it starts 072 is
20 the note number.

21 A. Okay. "Three month" -- I see. "Three month
22 update." I don't know what that word says. I can't
23 read it. "Charged off account, foreclosure process
24 started, real estate mortgage."

25 Q. Okay. And then if you go back up to the top



1 right, it says response date in that -- you see trade in
2 that first left quadrant, I'm going to call it, do you
3 see where it says that the response date is 12/5 of '17?

4 A. I see that.

5 Q. So what this tells me is that on December 5th,
6 2017, Fay told Equifax that this account needs to be
7 reported as three month update freeze, which I don't
8 know what that means, but also charged off account,
9 foreclosure process started and real estate mortgages.

10 A. Okay.

11 Q. Do you agree that that's what this document says?

12 A. I do.

13 Q. So does that change at all what you said earlier
14 about making sure that the credit bureau correctly
15 reports what Fay tells them?

16 A. In some ways a little bit, but here's a little
17 bit of what I'm a little bit confused on. This response
18 date is 12/5. The prior report you're looking at is
19 12/4. So Equifax had already mailed Sheelagh a letter
20 on December 4th obviously for information that they had
21 up till December 4th or prior, so -- and here's --
22 again, and I understand your questions and I'm -- you
23 had asked earlier about whether we started the
24 foreclosure.

25 Q. Uh-huh.



1 A. I don't think we ever started the foreclosure.
2 HSBC started the foreclosure. When the loan gets
3 boarded, the loan is already boarded as a foreclosure
4 status. The loan, once it gets boarded to MPS, is
5 already getting boarded in as foreclosure. So it gets
6 reported as foreclosure process started. Now, I don't
7 see anything in here or even in -- I had not seen
8 anything in any of Odsathers' letters other than they
9 didn't, you know, owe the debt and all that kind of
10 stuff. But there's nothing that's disputing whether the
11 foreclosure was ever started or not.

12 Nobody has ever said you never started a
13 foreclosure? No, you need to remove that from my credit
14 report, or that Equifax is saying that did this
15 foreclosure ever start or didn't it. Because,
16 obviously, from the information that we got from HSBC,
17 it did start and it hit the system from day one as soon
18 as that process started. So from day one it gets
19 reported to Equifax that, yeah, the foreclosure has
20 started.

21 I think the charge-off part was probably up --
22 and maybe it was charged off right here at this time
23 frame, and I do think if you went back to the notes that
24 we had, the Fay notes, I think right in the middle of
25 November we were talking about the charge-off note. So



1 right away from that charge-off period to the first
2 reporting, now we're reporting that it's charged off.

3 So I'm not -- I don't necessarily discount -- I'm
4 not -- I shouldn't use that word, but the information
5 that's here is reported properly for the information
6 that we had. And it's a hard -- it's -- I understand
7 how confusing it can be, but from day one, as far as we
8 were concerned, we had a -- or should have had a secured
9 note in foreclosure that was defaulted since 2014 and
10 all of these things going forward. You talk to Mr.
11 Odsather, and this process starts.

12 But, again, going back to the information from
13 when Mr. Odsather started saying that I don't owe this
14 debt and all this kind of stuff, it didn't change the
15 fact that the foreclosure had started and what was being
16 reported to the agency. And there was nothing to tell
17 us along the way that foreclosure hadn't -- you know,
18 that you should change that part of it because as far as
19 we were concerned the foreclosure did start and it was
20 still -- you know, it was still kind of moving forward
21 until we're trying to find all this information and get
22 all of this information going.

23 When it went to charge-off, the foreclosure was
24 still started. Even though it went to charge-off, it
25 was still at some point started. So we have not --



1 we're not going to change the information because
2 nobody -- nobody ever disputed the fact that there was a
3 foreclosure started. Mr. Odsather disputed that he owed
4 the debt and all that kind of stuff, but I don't know if
5 he ever disputed that the foreclosure had started.

6 Q. Well, Beneficial did. If you remember the
7 exhibit that we looked at, Beneficial wrote a letter
8 specifically stating no foreclosure was started and we
9 apologize for the confusion.

10 A. Right. But I think that --

11 Q. And that was in Fay's records.

12 A. I don't remember the dates of those letters and
13 when --

14 Q. I think they were 2015, if I remember correctly.

15 A. Okay.

16 Q. And you agree that they were in Fay's records, so
17 Fay knew that no foreclosure had started. Whether they
18 actually reviewed the documents and understood what that
19 meant, I mean, we've already been through that with the
20 Beneficial documents.

21 A. I don't recall the actual time of that.

22 Q. But you do remember that document that says no
23 foreclosure started and we apologize for the confusion?

24 A. Well, again, I'd have to go back and look at my
25 records. I was pretty sure that I saw a default letter

